

AMENDED IN ASSEMBLY MARCH 27, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2805**

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**Introduced by Assembly Member Blakeslee**

February 24, 2006

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An act to amend Section 650.02 of the Business and Professions Code, relating to health care.

LEGISLATIVE COUNSEL’S DIGEST

AB 2805, as amended, Blakeslee. Health care referrals.

Existing law, the Physician Ownership and Referral Act of 1993, prohibits a licensee, which is defined to include, among other things, physician and surgeons, psychologists, acupuncturists, optometrists, dentists, podiatrists, and chiropractic practitioners, from referring a person for certain health care services if the licensee has a financial interest, as defined, with the person or entity that receives the referral. Existing law exempts from this prohibition a service for a specific patient that is performed within, or goods that are supplied by, a licensee’s office, or the office of a group practice. A violation of the prohibition is a misdemeanor.

This bill would provide that a licensee’s office or the office of a group practice does not include an office arrangement where the licensee or group practice contracts with a person or entity for the provision of CT, PET, and MRI diagnostic imaging services and does not own the equipment or lease the equipment on a full-time basis. Because the bill would expand the persons that are subject to the prohibition on referrals, the violation of which is a crime, it would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 650.02 of the Business and Professions  
2 Code is amended to read:

3 650.02. The prohibition of Section 650.01 shall not apply to  
4 or restrict any of the following:

5 (a) A licensee may refer a patient for a good or service  
6 otherwise prohibited by subdivision (a) of Section 650.01 if the  
7 licensee's regular practice is located where there is no alternative  
8 provider of the service within either 25 miles or 40 minutes  
9 traveling time, via the shortest route on a paved road. If an  
10 alternative provider commences furnishing the good or service  
11 for which a patient was referred pursuant to this subdivision, the  
12 licensee shall cease referrals under this subdivision within six  
13 months of the time at which the licensee knew or should have  
14 known that the alternative provider is furnishing the good or  
15 service. A licensee who refers to or seeks consultation from an  
16 organization in which the licensee has a financial interest under  
17 this subdivision shall disclose this interest to the patient or the  
18 patient's parents or legal guardian in writing at the time of  
19 referral.

20 (b) A licensee, when the licensee or his or her immediate  
21 family has one or more of the following arrangements with  
22 another licensee, a person, or an entity, is not prohibited from  
23 referring a patient to the licensee, person, or entity because of the  
24 arrangement:

25 (1) A loan between a licensee and the recipient of the referral,  
26 if the loan has commercially reasonable terms, bears interest at  
27 the prime rate or a higher rate that does not constitute usury, is  
28 adequately secured, and the loan terms are not affected by either

1 party's referral of any person or the volume of services provided  
2 by either party.

3 (2) A lease of space or equipment between a licensee and the  
4 recipient of the referral, if the lease is written, has commercially  
5 reasonable terms, has a fixed periodic rent payment, has a term of  
6 one year or more, and the lease payments are not affected by  
7 either party's referral of any person or the volume of services  
8 provided by either party.

9 (3) Ownership of corporate investment securities, including  
10 shares, bonds, or other debt instruments that may be purchased  
11 on terms generally available to the public and that are traded on a  
12 licensed securities exchange or NASDAQ, do not base profit  
13 distributions or other transfers of value on the licensee's referral  
14 of persons to the corporation, do not have a separate class or  
15 accounting for any persons or for any licensees who may refer  
16 persons to the corporation, and are in a corporation that had, at  
17 the end of the corporation's most recent fiscal year, or on average  
18 during the previous three fiscal years, stockholder equity  
19 exceeding seventy-five million dollars (\$75,000,000).

20 (4) Ownership of shares in a regulated investment company as  
21 defined in Section 851(a) of the federal Internal Revenue Code, if  
22 the company had, at the end of the company's most recent fiscal  
23 year, or on average during the previous three fiscal years, total  
24 assets exceeding seventy-five million dollars (\$75,000,000).

25 (5) A one-time sale or transfer of a practice or property or  
26 other financial interest between a licensee and the recipient of the  
27 referral if the sale or transfer is for commercially reasonable  
28 terms and the consideration is not affected by either party's  
29 referral of any person or the volume of services provided by  
30 either party.

31 (6) A personal services arrangement between a licensee or an  
32 immediate family member of the licensee and the recipient of the  
33 referral if the arrangement meets all of the following  
34 requirements:

35 (A) It is set out in writing and is signed by the parties.

36 (B) It specifies all of the services to be provided by the  
37 licensee or an immediate family member of the licensee.

38 (C) The aggregate services contracted for do not exceed those  
39 that are reasonable and necessary for the legitimate business  
40 purposes of the arrangement.

1 (D) A person who is referred by a licensee or an immediate  
2 family member of the licensee is informed in writing of the  
3 personal services arrangement that includes information on  
4 where a person may go to file a complaint against the licensee or  
5 the immediate family member of the licensee.

6 (E) The term of the arrangement is for at least one year.

7 (F) The compensation to be paid over the term of the  
8 arrangement is set in advance, does not exceed fair market value,  
9 and is not determined in a manner that takes into account the  
10 volume or value of any referrals or other business generated  
11 between the parties.

12 (G) The services to be performed under the arrangement do  
13 not involve the counseling or promotion of a business  
14 arrangement or other activity that violates any state or federal  
15 law.

16 (c) (1) A licensee may refer a person to a health facility, as  
17 defined in Section 1250 of the Health and Safety Code, or to any  
18 facility owned or leased by a health facility, if the recipient of the  
19 referral does not compensate the licensee for the patient referral,  
20 and any equipment lease arrangement between the licensee and  
21 the referral recipient complies with the requirements of  
22 paragraph (2) of subdivision (b).

23 (2) Nothing shall preclude this subdivision from applying to a  
24 licensee solely because the licensee has an ownership or  
25 leasehold interest in an entire health facility or an entity that  
26 owns or leases an entire health facility.

27 (3) A licensee may refer a person to a health facility for any  
28 service classified as an emergency under subdivision (a) or (b) of  
29 Section 1317.1 of the Health and Safety Code.

30 (4) A licensee may refer a person to any organization that  
31 owns or leases a health facility licensed pursuant to subdivision  
32 (a), (b), or (f) of Section 1250 of the Health and Safety Code if  
33 the licensee is not compensated for the patient referral, the  
34 licensee does not receive any payment from the recipient of the  
35 referral that is based or determined on the number or value of any  
36 patient referrals, and any equipment lease arrangement between  
37 the licensee and the referral recipient complies with the  
38 requirements of paragraph (2) of subdivision (b). For purposes of  
39 this paragraph, the ownership may be through stock or  
40 membership, and may be represented by a parent holding

1 company that solely owns or controls both the health facility  
2 organization and the affiliated organization.

3 (d) A licensee may refer a person to a nonprofit corporation  
4 that provides physician services pursuant to subdivision (l) of  
5 Section 1206 of the Health and Safety Code if the nonprofit  
6 corporation is controlled through membership by one or more  
7 health facilities or health facility systems and the amount of  
8 compensation or other transfer of funds from the health facility  
9 or nonprofit corporation to the licensee is fixed annually, except  
10 for adjustments caused by physicians joining or leaving the  
11 groups during the year, and is not based on the number of  
12 persons utilizing goods or services specified in Section 650.01.

13 (e) A licensee compensated or employed by a university may  
14 refer a person for a physician service, to any facility owned or  
15 operated by the university, or to another licensee employed by  
16 the university, provided that the facility or university does not  
17 compensate the referring licensee for the patient referral. In the  
18 case of a facility that is totally or partially owned by an entity  
19 other than the university, but that is staffed by university  
20 physicians, those physicians may not refer patients to the facility  
21 if the facility compensates the referring physicians for those  
22 referrals.

23 (f) (1) The prohibition of Section 650.01 shall not apply to  
24 any service for a specific patient that is performed within, or  
25 goods that are supplied by, a licensee's office, or the office of a  
26 group practice.

27 For the purposes of this subdivision, a licensee's office or the  
28 office of a group practice shall not include an office arrangement  
29 that meets both of the following requirements:

30 (A) The licensee or group practice contracts with a person or  
31 entity for the provision of Computerized Tomography (CT),  
32 ~~Position~~ Positron Emission Tomography (PET), and Magnetic  
33 Resonance Imaging (MRI) diagnostic imaging services.

34 (B) The licensee or group practice does not own the equipment  
35 or lease the equipment on a full time basis.

36 (2) Further, the provisions of Section 650.01 shall not alter,  
37 limit, or expand a licensee's ability to deliver, or to direct or  
38 supervise the delivery of, in-office goods or services according to  
39 the laws, rules, and regulations governing his or her scope of  
40 practice.

1 (g) The prohibition of Section 650.01 shall not apply to  
2 cardiac rehabilitation services provided by a licensee or by a  
3 suitably trained individual under the direct or general supervision  
4 of a licensee, if the services are provided to patients meeting the  
5 criteria for Medicare reimbursement for the services.

6 (h) The prohibition of Section 650.01 shall not apply if a  
7 licensee is in the office of a group practice and refers a person for  
8 services or goods specified in Section 650.01 to a multispecialty  
9 clinic, as defined in subdivision (l) of Section 1206 of the Health  
10 and Safety Code.

11 (i) The prohibition of Section 650.01 shall not apply to health  
12 care services provided to an enrollee of a health care service plan  
13 licensed pursuant to the Knox-Keene Health Care Service Plan  
14 Act of 1975 (Chapter 2.2 (commencing with Section 1340) of  
15 Division 2 of the Health and Safety Code).

16 (j) The prohibition of Section 650.01 shall not apply to a  
17 request by a pathologist for clinical diagnostic laboratory tests  
18 and pathological examination services, a request by a radiologist  
19 for diagnostic radiology services, or a request by a radiation  
20 oncologist for radiation therapy if those services are furnished  
21 by, or under the supervision of, the pathologist, radiologist, or  
22 radiation oncologist pursuant to a consultation requested by  
23 another physician.

24 (k) This section shall not apply to referrals for services that are  
25 described in and covered by Sections 139.3 and 139.31 of the  
26 Labor Code.

27 (l) This section shall become operative on January 1, 1995.

28 SEC. 2. No reimbursement is required by this act pursuant to  
29 Section 6 of Article XIII B of the California Constitution because  
30 the only costs that may be incurred by a local agency or school  
31 district will be incurred because this act creates a new crime or  
32 infraction, eliminates a crime or infraction, or changes the  
33 penalty for a crime or infraction, within the meaning of Section  
34 17556 of the Government Code, or changes the definition of a  
35 crime within the meaning of Section 6 of Article XIII B of the  
36 California Constitution.